

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA CR 07-599

ANDREW LEE BOOTH

January 30, 2008

APPELLANT

V.

APPEAL FROM THE PULASKI COUNTY
CIRCUIT COURT
[NO. CR-2005-488]

STATE OF ARKANSAS

HONORABLE JOHN LANGSTON,
JUDGE

APPELLEE

AFFIRMED

Appellant, Andrew Booth, was sentenced to nine years' imprisonment after the trial court found he had committed new offenses while on probation. On appeal, he argues that because he was found not guilty of those new offenses in a criminal trial, the trial court erred in finding he had committed the new offenses and revoking his probation on that basis. We affirm.

On August 24, 2005, appellant pled guilty to one count of residential burglary, and the court sentenced him to four months' imprisonment and five years of probation. On September 11, 2006, the State filed a petition to revoke appellant's probation, alleging that on July 5, 2006, he had committed the offenses of kidnapping, terroristic threatening in the

first degree, and battery in the third degree. A jury trial was held on those criminal charges on January 24, 2007, with the probation revocation hearing to immediately follow the criminal trial. The parties stipulated that the evidence heard at the criminal trial would be admissible, without having to be reintroduced, at the revocation hearing.

At the criminal trial, Barbara Thomas, appellant's former girlfriend, testified that appellant had assaulted her, which caused her to call the police and have him removed from her home. Thomas testified that appellant returned later that night while she was sleeping, and she awoke to appellant choking her and dragging her out of her bedroom window. She testified that appellant threatened to kill her. Thomas testified that she was forced to wake two of her children, and she and the children accompanied appellant to his work at McDonald's. According to Thomas, she and her children sat in appellant's truck for two hours, in constant view of appellant. She then convinced appellant to drop her children off at her mother's house, and Thomas was able to contact her mother after appellant fell asleep at a family member's house.

Appellant testified and acknowledged that he and Thomas had argued on the night in question, but he asserted that she was the aggressor and he had merely pushed her. He also testified that he had returned to the house later that night to talk things out and that he had observed Thomas and another man smoking crack in her bedroom. Appellant testified that he waited until the lights were turned out and then knocked on the window, and Thomas had exited the house willingly to talk to him. He claimed that Thomas had been smoking crack

and insisted on accompanying him to work. Appellant insisted that at no time had he injured Thomas or threatened her life.

The jury returned a verdict of not guilty on all counts. The court then began the probation hearing, and the State called appellant's probation officer, Katrina Ginger, to testify. Ginger testified that to her knowledge, appellant had violated the terms of his probation by committing new offenses, failing to report, and not paying \$50 in supervision fees. The court noted that it would not consider the testimony regarding failure to report, as it was not a ground for revocation in the petition. Based on the testimony presented at the trial, however, the court found appellant to be in willful violation of the conditions of his probation by committing new offenses and revoked his probation. This appeal followed.

To revoke probation or a suspended sentence, the burden is on the State to prove the violation of a condition of the probation or suspended sentence by a preponderance of the evidence. *Patterson v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (May 30, 2007). We will not reverse a trial court's findings on revocation of probation unless they are clearly against the preponderance of the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Haley v. State*, 96 Ark. App. 256, ___ S.W.3d ___ (2006). Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position. *Id.*

On appeal, appellant acknowledges that the State has a lower burden of proof in a probation revocation proceeding than in a criminal trial, but he asserts that because the jury concluded that the new offenses had “never happened,” the trial court erred in finding that they did happen under any standard of proof. However, a verdict of not guilty does not mean the alleged crimes “never happened,” it simply means that the jury found the State had failed to prove the guilt of the accused beyond a reasonable doubt. Notwithstanding the jury’s verdict, the trial court was entitled to believe the testimony of Thomas and disbelieve the testimony of appellant, as he was the person most interested in the outcome of the hearing. *Flowers v. State*, 362 Ark. 193, 208 S.W.3d 113 (2005). *See also Kirby v. State*, 52 Ark. App. 161, 915 S.W.2d 736 (1996) (holding that trial court could properly revoke appellant’s probation on finding that appellant had committed battery, after a jury acquitted appellant of the battery charge in a simultaneous criminal trial). Accordingly, we hold that the evidence was sufficient to support the trial court’s finding and affirm.

Affirmed.

HART and MILLER, JJ., agree.